

# **CITY OF LEWISTON**

**CITY COUNCIL**

**SEPTEMBER 9, 2008**

## **SPECIAL MEETING HELD IN THE COUNCIL ROOM AT 7:00 P.M**

THE HONORABLE LAURENT F. GILBERT, SR., MAYOR, PRESIDING.

PRESENT: Mayor Gilbert, Councilors T. Peters, N. Peters, Poulin, Theriault, Bailey, Dube, Reed, City Administrator James Bennett, City Attorney Martin Eisenstein and City Clerk Kathleen Montejo. Also present were Robert Gladu, Ralph Sawyer and their attorney, Scott Lynch.

Pledge of Allegiance to the Flag.  
Moment of Silence.

### **EXECUTIVE SESSION**

#### **VOTE (1)**

Motion by Councilor T. Peters, seconded by Councilor N. Peters:

To enter into an executive session pursuant to MRSA Title 1, section 405(6)(E) to discuss a legal matter with the City Attorney regarding the stormwater appeal hearings. Passed - Vote 7-0

Present in the Executive Session were Mayor Gilbert, Councilors T. Peters, N. Peters, Poulin, Theriault, Bailey, Dube, Reed, and City Attorney Martin Eisenstein. The executive session began at 6:15pm and ended at 6:50pm.

#### **APPEAL HEARINGS REGARDING THE STORMWATER UTILITY ASSESSMENT FOR THE PROPERTIES LOCATED AT 550 LISBON STREET, 35 ADAMS AVENUE AND 475 PLEASANT STREET**

The issue before the City Council was to conduct an appeal hearing of the stormwater utility assessment for the properties at 550 Lisbon Street, 35 Adams Avenue and 475 Pleasant Street and to determine a course of action.

Mayor Gilbert read a prepared opening statement which outlined the process for the hearings for this evening. The statement indicated the issue before the City Council this evening is whether the determination of the Superintendent of the Stormwater Utility regarding the amount of the service fee is accurate for the three properties listed, based upon the City's ordinance. It was noted, as such, the City Council needs to determine if the amount of the impervious surface used to calculate the fee for each property is accurate, if the calculation of the amount of the fee is accurate and if any credit is due to the property owner, Mr. Gladu, based upon the ordinance.

Mayor Gilbert then posed the following two questions to each Councilor: Do you personally know Mr. Gladu and do you feel that you can be objective in your review for this hearing?

Councilor T. Peters stated he knows Mr. Gladu and has no reason to not be impartial during the hearing. Councilors N. Peters and Theriault had the same response. Councilors Poulin and Bailey said that they do not know Mr. Gladu and have no reason to not be impartial during the hearing. Councilor Dube stated that Mr. Gladu is a constituent of her ward and she has no reason to not be impartial during this hearing. Councilor Reed said that he only knows Mr. Gladu from these proceedings and he has no reason to not be impartial during the hearing.

Mr. Lynch stated he felt the rules of procedure for the hearing as laid out in the Mayor's opening statement were unduly restrictive and although he is prepared to address the three issues outlined, there are more issues that need to be explored such as the validity of the ordinance itself. He noted the City Council has held workshops on the stormwater issue when issues were discussed and material that he will present will show that the ordinance violates the city charter and state law, and this information is necessary in determining a decision for the hearing appeal.

The Mayor then asked City Administrator James Bennett and Public Services Director David Jones to present their information. Mr. Bennett provided a history of the ordinance and noted there are approximately 10,850 stormwater utility accounts and about 2.1% are unpaid. Mr. Jones provided a timeframe of the issue stating the ordinance went into effect July 2006 and the first bills were mailed in the spring of 2007. He noted that about one month later Mr. Gladu sent a letter requesting a review of the stormwater calculation for his properties and a response was sent to Mr. Gladu from Mr. Jones. These letters are part of the exhibits presented to the Council. Mr. Jones then reviewed a map which outlined the three properties for the hearing and highlighted recent storm drain costs such as \$849,000 for Gully Brook repairs, \$60,000 for the "Big Dig" sink hole cave in repair and \$275,000 for storm drains.

Councilor T. Peters noted the appeals for this hearing pertain to the billing for the last quarter of 2007 and the first, second and third quarter of the 2008 billing cycle. Mr. Eisenstein pointed out the entire City Council agenda packet material for this meeting was posted on the City's website on Friday and Mr. Lynch said that he reviewed the packet and printed the material from the website.

Mr. Bennett and Mr. Jones presented City Exhibits 1-14 for the record and Mr. Lynch stated he has no objections to these Exhibits as presented. Mr. Bennett and Mr. Jones then indicated their presentation was complete.

Mayor Gilbert then invited Mr. Gladu and Mr. Lynch forward to present their information. Mr. Lynch then introduced Mr. Ralph Sawyer, co-owner of Pepperell Mill Associates. It was noted that Pepperell Mill Associates is owned by Mr. Gladu and Mr. Sawyer and the company owns the properties at 35 Adams Avenue and 550 Lisbon Street.

Mayor Gilbert then posed the question to each Councilor whether or not they knew Mr. Sawyer and if they felt they can be objective in their review for this hearing. All Councilors indicated they did not know Mr. Sawyer and felt they could be objective during the hearing.

Mr. Lynch then briefly reviewed Exhibits 1-32 that he prepared and presented. Mr. Lynch raised a question regarding ownership of part of the Gully Brook system and said that in 2000 or 2001

the City sought an easement from Pepperell Mill Associates regarding Gully Brook, yet this easement is not recorded at the Registry of Deeds and a copy cannot be obtained to see if it was ever executed. He questioned the billing assessment for property that is in question regarding ownership status.

Mr. Lynch then reviewed the Hill Mill property and the stormwater credit that they received and compared this property's situation to the properties they are appealing. He indicated that the Hill Mill received a credit of 50% of their assessment and he felt that at a minimum this should be afforded to these three properties as well, since the circumstances are similar. Mr. Lynch said the criteria applied in determining the credit for the Hill Mill property should be the same as to these other properties under appeal. The Hill Mill stormwater goes into catch basins and travels a longer distance and the property at 550 Lisbon Street goes into Gully Brook and travels a shorter distance for processing.

Mr. Lynch then reviewed Exhibit 31 outlining the differences between fees and taxes and argued that the stormwater utility fee is actually a tax rather than a fee. He noted it is not optional but an assessment and property owners cannot control the amount of rain that falls on their property like they could control the amount of water they use from a tap. He also pointed out the City's ordinance states the revenue will be used for capital improvements to the stormwater system, which is a public purpose and therefore a tax. Mr. Lynch also reviewed definitions from the state statutes regarding fees and taxes and noted that any new taxes need to be voted upon by the citizens, which this has not been. He questioned the constitutionality of the fee.

Councilor T. Peters made a point of order, questioning the relevance of the material that is being presented regarding the ordinance discussion which is not the purpose of the hearing, noting the intent of the hearing is to determine if the stormwater calculations for these properties were done correctly by the Superintendent. Mayor Gilbert said that he would allow Mr. Lynch to finish his presentation for the sake of getting this information on the record.

Mayor Gilbert then permitted Mr. Bennett and Mr. Jones to respond to issues raised in Mr. Lynch's presentation. Mr. Bennett said the owners of the Hill Mill applied for a credit pursuant to the City's Stormwater Policy and that the owners of the Pepperell Mill did not apply for such a credit. Mr. Jones indicated the stormwater runoff from the Hill Mill property never enters the city's stormwater collection system (storm drains) and goes right into the river.

Mr. Bennett noted the fee is a user fee based upon an ad valorem system and that other communities such as Yarmouth and Old Orchard Beach have moved items from taxes over to user fees. He said there has been almost \$1.2 million worth of work done for the Gully Brook system. He pointed out to the Council that neither Mr. Lynch nor Mr. Gladu were able to present information or evidence that the Superintendent did not calculate the assessment fee correctly for these three properties.

Councilor Poulin inquired how much of the stormwater runoff from the Pepperell Mill does go into Gully Brook. Mr. Jones indicated that some of the water goes into Gully Brook and some into the storm drain system. Councilor T. Peters asked about the issuance of credit and who initiates the credits. Mr. Bennett said the applicants must apply for the credits under the City's Stormwater Policy.

Councilor N. Peters asked about Exhibit 9 which was a letter to Mr. Gladu from Mr. Jones which stated that nothing could be done for him to lower the stormwater assessment of his properties. Councilor Peters wanted to know why the credit option was not mentioned. Mr. Jones said the letter was written in response to a conversation that Mr. Gladu had with Mr. Bennett and Mr. Jones in which he inquired about possible TIFs or economic development incentives to offset the stormwater fees, and the discussion was not about credits. Mr. Bennett pointed out Exhibit 4 in which all procedural aspects were covered and Mr. Gladu was aware of the credit option.

Mr. Jones was asked about Gully Brook and he explained it is an underground tank and pipe system that is man made and the city maintains. It is believed to be from old mill buildings that used the system to drain dyes and other discharge from the mills into the river.

Mayor Gilbert then allowed Mr. Gladu, Mr. Sawyer and Mr. Lynch to respond and reply to issues that were raised by the City. Mr. Gladu said that the runoff for the property on Pleasant Street flows into Hart Brook and should be allowed for a credit.

Councilor N. Peters asked Mr. Gladu if he ever asked for credits for his properties or applied for credits. Mr. Gladu said that he requested a review of the assessment fee and assumed it was all included. Mr. Gladu said the ordinance is very confusing and discouraging to the average person to request a credit unless they are an engineer or lawyer.

Mr. Lynch said the ownership of the portion of Gully Brook under the Pepperell Mill is unclear and unknown and suggested that until the issue of the possible easement is resolved, it cannot be assessed and taxed to Mr. Gladu. He also said that all of the material presented this evening is enough for the Council to determine that a credit is due to Mr. Gladu and the only item that is missing is the credit application form itself, but all supporting documents and information are contained within the material presented. He therefore requested the Council to approve a credit for these properties this evening.

Mayor Gilbert asked Mr. Eisenstein if the Council can issue or approve a credit this evening and Mr. Eisenstein said no, indicating their sole role is to determine if the Superintendent made an error when calculating the stormwater assessment fee for these properties. Mr. Eisenstein said that a credit request has been submitted tonight via the material presented by Mr. Lynch, but it must be processed according to the City's Stormwater Policy, which would mean the material goes to the Superintendent for review and determination.

At this point, the Mayor invited both parties to make closing statements. Mr. Bennett said the main role of the Council this evening is to determine if the city staff followed or violated the ordinance regarding the stormwater assessment of these three properties - was the amount of impervious surface calculated correctly and if so, was the correct fee amount assessed? Mr. Lynch has not presented any evidence that the fee calculations were not correct and in error. Mr. Bennett noted that Mr. Lynch made two arguments this evening - the Policy is a bad policy and the credits were not issued. Mr. Bennett said if the Council feels the Policy is a bad policy or flawed, they can amend the Policy at a future Council meeting, but not during the hearing this evening. He said the applicant did not apply for a credit and therefore one was not issued. In order to receive a credit, a property owner has to demonstrate that their rainwater never touches the city storm drain system and they have not been able to demonstrate that so far.

Mr. Lynch said that three items were up for determination this evening according to the Mayor's opening statement and the third item was regarding if any credit was due to Mr. Gladu under Section 74-309 of the ordinance, regarding system impact. He said that now they are told they cannot have the credit issue decided tonight because they did not properly apply for the credit, but he said the opening statement says it is OK for the Council to decide this. Mr. Lynch noted the entire scope of the hearing was not just on impervious surface and math calculations, but also if a credit is due to the applicant. He urged the Council to act on the credit piece and suggested they issue a credit of 100%, or at a minimum, a credit of 50% to be retroactive to the date Mr. Gladu was told the City cannot do anything for him.

Mr. Eisenstein noted the opening statement said the Council will make a determination if the Superintendent's decision to not issue a credit was correct or not, not that they could issue a credit this evening.

At 9:30pm, the Mayor declared the hearing closed. Councilor T. Peters said that information regarding the impervious surface calculations, either done correctly or in error, were not mentioned by Mr. Lynch and there is no indication the Superintendent erred when making these calculations. Councilor Peters stated that Mr. Gladu must have known about the credit option because he had copies of the City's ordinance and policy regarding the stormwater utility.

Councilor Poulin said that he found the information in Exhibit 9 to be compelling when the city staff informed Mr. Gladu that nothing could be done regarding his assessment and he feels that Mr. Gladu was shut down by staff and denied the credit option from the beginning. He said the comparison to the Hill Mill property was compelling and the city needs to apply the system fairly to all property owners. He said the city should issue a credit to Mr. Gladu for the property located over the Gully Brook.

Councilor N. Peters said that Mr. Gladu should be treated fairly and the Council was asked to decide three issues this evening. He said that items one and two were not brought up regarding the impervious surface and the proper calculation of such. He noted that Mr. Gladu never formally applied for credit but did inquire of city staff for help regarding the fee and wasn't informed of the credit option, but said it is unclear since this dialog occurred during a discussion with Mr. Gladu, Mr. Bennett and Mr. Jones. Councilor Reed agreed that no information has been presented regarding the first two issues, but that he would recommend that Mr. Gladu proceed with a credit application request. Councilor T. Peters noted there is some confusion regarding the intent of the information in the letter (Exhibit 9) and suggested the Superintendent review the information for the possible application of credit, to be retroactive to when the appeal was first filed. Councilor Theriault concurred that the Superintendent should review the material for a possible credit, and said the city's letter should have mentioned the credit option since the city employee's role is to assist citizens with city procedures.

## **VOTE (2)**

Motion by Councilor Reed, seconded by Councilor T. Peters:

That Robert Gladu's appeal of the amount of the stormwater utility service fee on his properties at 550 Lisbon Street, 35 Adams Avenue and 475 Pleasant Street is denied since the amount of the impervious surface used to calculate the service fee is accurate. Passed - Vote 7-0

**VOTE (3)**

Motion by Councilor Reed, seconded by Councilor N. Peters:

That Robert Gladu's appeal of the amount of the stormwater utility service fee on his properties at 550 Lisbon Street, 35 Adams Avenue and 475 Pleasant Street is denied since the calculation of the amount of the service fee, based on the amount of impervious surface and the fee in effect under the Stormwater Utility Ordinance, is accurate. Passed - Vote 7-0

**VOTE (4)**

Motion by Councilor T. Peters, seconded by Councilor N. Peters:

That Robert Gladu's appeal of the amount of the stormwater utility service fee on his properties at 550 Lisbon Street, 35 Adams Avenue and 475 Pleasant Street is denied since the Superintendent did correctly determine that no credit is due to Mr. Gladu under Section 74-309 of the Stormwater Utility Ordinance, however, the City Council further instructs the Superintendent to review whether or not any credit is due to Mr. Gladu retroactive to July 9, 2007, and if credits are due on these three properties that this be given to Mr. Gladu and that sixty days be provided to the parties for this process. Passed - Vote 7-0

**VOTE (5)**

Motion by Councilor Reed, second by Councilor Theriault:

To adjourn at 10:00 P.M. Passed - Vote 7-0

A true record, Attest:

Kathleen M. Montejo, MMC  
City Clerk  
Lewiston, Maine